

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

Dekalb County Commission )  
Collinsville Chert Pit )  
Fort Payne, Alabama )  
Dekalb County, Alabama )  
NPDES Permit No. AL0075868 )

ORDER NO. - -WP

***FINDINGS***

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.), the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. The Dekalb County Commission (hereinafter "Permittee") operates a mining facility known as the Collinsville Chert Pit (hereinafter "Facility") located in Fort Payne, Dekalb County, Alabama. The Facility discharges pollutants from storm water runoff into an unnamed tributary to Hammondville Branch, a water of the State.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department reissued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0075281 (hereinafter "Permit") to the Permittee on December 30, 2003, establishing limitations on the discharge of pollutants from storm water

runoff, designated therein as outfall 001 and 002, into unnamed tributaries to Little Wills Creek, waters of the State. The Permit requires that the Permittee monitor its discharge and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee maintain in good working order all systems used by the Permittee to achieve compliance with the terms and conditions of the Permit.

5. Part II.B.10.a of the Permit requires that the Permittee file a complete application for permit reissuance within at least 180 days prior to the Permit's expiration if the Permittee intends to discharge beyond the expiration date of the Permit. The expiration date of the Permit was December 31, 2008. Therefore, the Permittee's application was due to be submitted to the Department no later than July 4, 2008. The Department received an untimely application for the Permittee's Permit reissuance on June 17, 2009.

6. As set forth in ADEM Admin. Code r. 335-6-6-.06, the terms and conditions of an expiring NPDES permit are automatically extended pending issuance of a new permit if the Permittee has submitted a timely and complete application for reissuance of its NPDES permit and if any subsequent delay in permit issuance is not caused by the actions of the Permittee.

7. Part II.B.10.b of the Permit states that "[f]ailure of the Permittee to apply for permit reissuance at least 180 days prior to permit expiration will void the automatic continuation of the expiring permit provided by ADEM Administrative Code Rule 335-6-6-.06 and, should the permit not be reissued for any reason, any discharge after discharge of this permit will be an unpermitted discharge."

8. The Department did not receive a timely and complete permit application from the Permittee as provided above. Therefore, the Permittee's Permit expired on December 31, 2008. As a result of the Permit expiration, all discharges from outfalls 001 and 002 into the unnamed tributaries to Little Wills Creek have been unpermitted since January 1, 2009. Any further discharges will remain unpermitted until the date of the Permit reissuance.

9. The Department inspected the Facility on December 16, 2008, and issued a Notice of Violation (hereinafter "NOV") to the Permittee on May 19, 2009. The NOV addressed the Facility's unpermitted status, as well as the deficiencies noted during the inspection.

10. Pursuant to Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by the Permittee; the economic benefit that delayed compliance may have conferred upon the Permittee; the nature, extent and degree of success of Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Permittee violated its Permit by failing to submit a timely application for permit renewal. The Department has no evidence of irreparable harm to the environment or of any threat to the health and safety of the public as a result of the violations stated herein.

B. **THE STANDARD OF CARE:** The Permittee failed to achieve compliance with the terms and conditions of the Permit.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if there has been a significant economic benefit to the Permittee as a result of these violations.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** There are no known effects on the environment as a result of the violations addressed by this Order.

E. HISTORY OF PREVIOUS VIOLATIONS: Historical violations were considered in the development of the civil penalty.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

### **ORDER**

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after receipt of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$3,000.00 for the violations stated herein.

B. That all penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
P.O. Box 301463  
Montgomery, Alabama 36130-1463

C. That the Permittee shall comply with all terms, limitations, and conditions of NPDES Permit Number AL0075868 that expired on December 31, 2008, until such time as the reissued Permit becomes effective. The Permittee must comply with all terms, limitations, and conditions of the reissued Permit beginning on the effective date of that Permit.

D. That this Order must not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

E. That final approval and issuance of this Order are subject to the requirement that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the proposed Order.

F. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or

State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

G. That, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

H. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Permittee for the violations cited herein.

I. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Permittee for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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Onis "Trey" Glenn, III  
Director

**ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE**

I, James E. McIndoe, do hereby certify that I have served the executed Administrative Order XX-XXX-WP upon the person listed below by sending the same, postage paid, through the United States Mail Certified Mail Receipt Number XXXXXXXXXXXXX, with instructions to forward and return receipt, to:

**Sid Holcomb  
Mayor  
DeKalb County Commission  
111 Grand Avenue SW Suite 200  
Fort Payne, Alabama 35967**

Done this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

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James E. McIndoe  
Chief, Water Division  
Alabama Department of Environmental Management